

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA L. HOLLEY and U.S. POSTAL SERVICE,
CARR POST OFFICE, Florissant, MO

*Docket No. 00-725; Submitted on the Record;
Issued January 11, 2001*

DECISION and ORDER

Before DAVID S. GERSON, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's benefits effective September 14, 1999.

On January 31, 1996 appellant, then a 33-year-old letter carrier, filed an occupational disease claim alleging that her left lower ankle pain was caused by factors of federal employment. She characterized her condition as tendinitis.

On June 26, 1997 the Office accepted appellant's claim for peroneal tendinitis, left ankle.

On November 13, 1997 appellant filed a claim for recurrence of disability noting that she had pain in the left ankle "as original injury, along with other pain in lower foot." The employing establishment noted that appellant began a sedentary job on December 29, 1997.

On February 26, 1998 the Office accepted appellant's claim for recurrence of peroneal tendinitis of the left ankle.

In a report dated July 27, 1998, Dr. Richard B. Helfrey, appellant's treating osteopath, requested authorization for surgery. He stated that appellant had been diagnosed with mild pes cavus deformity of both feet, peroneal tendinitis secondary to overuse phenomenon, intractable keratoses of the medial sesamoids, second and fifth metatarsal heads, rigid hammertoe deformities of the second toes bilaterally and flexible hammertoes of the third and fourth. Dr. Helfrey then stated:

"[P]lanned surgical intervention would be rigid hammertoe correction of the second with a plantar condylectomy of the second metatarsal, flexible hammertoe corrections of the third and fourth toes as well as a bunionette surgery and plantar condylectomy of the fifth toe. We would perform surgery on the right foot initially and then subsequently perform left foot surgery in a similar fashion."

“In regard to how the surgery is related to her accepted condition she has intractable plantar keratotic lesions over these areas. These are lesions that have formed subsequent to the rigid hammertoe deformity she has of the fifth toe and the excessive pressure that she puts on this medial sesamoid area with weight bearing. Since [appellant] works as a postal worker her job is certainly an aggravating component to her continued and long-standing condition. Though I cannot state that being a postal worker has caused her foot deformities, the continued activity has certainly been an aggravating factor.”

In a report dated August 12, 1998, the Office medical adviser stated that the requested authorization for surgical intervention concerned a procedure anatomically unrelated to appellant’s lower extremities and “what must be inferred as congenital, thus, nonwork-related” and, therefore, recommended against authorization for surgery.

In a report dated July 13, 1998, Dr. Helfrey stated that appellant’s peroneal tendinitis “has certainly improved to the point that I do n[o]t think anything is necessary in the hindfoot or midfoot.” In a report dated October 26, 1998, he stated that appellant was symptomatic in the peroneal tendon and had significant callosity formation in several metatarsal heads of both feet.

In a duty status report dated February 1, 1999, Dr. Helfrey stated that appellant had peroneal tendinitis and callosities due to her employment and restricted her to a sedentary job.

The Office then referred appellant, along with a statement of accepted facts, to Dr. James Emanuel, a second opinion physician and a Board-certified orthopedic surgeon, to determine whether appellant’s accepted left ankle peroneal tendinitis had resolved and whether appellant’s preexisting foot conditions were aggravated by her employment.

In a report dated June 14, 1999, Dr. Emanuel received appellant’s history of injury and stated that, upon examination, her ankle stability was normal and that she had a thickened callus at the plantar surface of the foot and fixed hammertoe deformity of the second toes. Appellant had fixed mallet toe and a mild bunionette deformity on both feet. Dr. Emanuel found that appellant had asymptomatic hammertoes and that her first metatarsal bone was longer than her first. He concluded that appellant was capable of returning “to duties with the restrictions that have already been outlined for her;” that surgery is not indicated; and that her prohibition from returning to full duty is due to her preexisting bilateral foot deformities and “not due to the left peroneal tendinitis

In a report dated July 19, 1999, Dr. Emanuel stated that he found no evidence of peroneal tendinitis in the left ankle and “in fact, found her ankle range of motion to be within normal limits without pain with resisted movements of the ankle.”

On August 6, 1999 the Office proposed to terminate appellant’s benefits on the grounds that the medical evidence supported that her left ankle peroneal tendinitis had resolved and that her preexisting foot deformities were not causally related to her employment duties.

In a report dated August 30, 1999, Dr. Helfrey stated: “[Appellant’s] ankles “continued to improve” and been treating her over the past several months for her peroneal tendinitis.” He added: “[H]er condition is clearly an anatomical problem that is exacerbated, not caused by her

work.” Dr. Helfrey further noted: “I have certainly not indicated that we have been treating her for the last two years for peroneal tend[i]nitis, that certainly resolved in and of itself.”

By decision dated September 14, 1999, the Office terminated appellant’s benefits effective that date on the grounds that Dr. Helfrey, her treating physician, found that her left ankle peroneal tendinitis had resolved. The Office also noted that the opinion of Dr. Emanuel was well reasoned in finding that her preexisting foot injuries were not caused or aggravated by her employment.

The Board finds that the Office met its burden of proof in terminating appellant’s compensation effective September 14, 1999.

Once the Office accepts a claim, it has the burden of proving that the disability ceased or lessened in order to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to his federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to employment.² Furthermore, the right to medical benefits for the accepted condition is not limited to the period of entitlement to disability.³ To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which no longer requires medical treatment.⁴

In this case, Dr. Emanuel, a Board-certified orthopedic surgeon, provided a well-reasoned opinion stating that appellant’s accepted injury had resolved and that her preexisting foot deformities were not temporarily or permanently aggravated by her work duties. He stated that, upon examination, appellant had active dorsiflexion, plantar flexion, inversion and eversion of both ankles and that there was no redness, no warmth or erythema. Dr. Emanuel also noted that appellant’s ankle stability was normal. He stated that he “did not find evidence suggestive of a peroneal tendinitis as there was no swelling in the peroneal tendon sheath region.” Appellant was precluded from resuming full duty due to the preexisting foot deformities and not due to the accepted condition. Dr. Emanuel concluded that appellant’s preexisting conditions of hammertoes, bunions and plantar keratotic lesions were not work related, because these conditions occur in the normal population and are related to genetics and shoe wear. He added that appellant had not walked a carrier route for more than a year and was using a vehicle in delivering the mail.

On the other hand, Dr. Helfrey stated that he had not been treating appellant for the last months to a year for peroneal tendinitis because she did not have those symptoms. Although he stated that appellant’s preexisting deformities were aggravated by work, he did not submit a

¹ *Frederick Justiniano*, 45 ECAB 491 (1994).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

rationalized medical opinion to support this conclusion. Consequently, Dr. Helfrey's opinion is insufficient to establish that appellant's preexisting deformities were aggravated by her accepted injury. The weight of the evidence, therefore, lies with the well-rationalized opinion of Dr. Emanuel finding that appellant's employment-related left ankle condition had resolved and that her employment did not aggravate her preexisting foot conditions.

The decision of the Office of Workers' Compensation Programs dated September 14, 1999 is affirmed.

Dated, Washington, DC

January 11, 2001

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member